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PROPERTY—EQUITABLE SERVITUDES—STATUTE OF FRAUDS.—At the time the respondent granted the complainant's lot, he orally agreed with the plaintiff to impose on all subsequent grantees restrictions not to construct certain kinds of buildings, not to build within ten feet of the street, etc. No covenant to that effect appeared in the deed to the complainant. The complainant brought a bill in equity to prevent the respondent from conveying some of his lots in violation of the agreement. *Held,* that the relief be denied, because such restrictions were hereditaments, and an oral agreement to impose them was unenforceable under the statute of frauds. *Ham v. Massasoit Real Estate Co.* (1919, R. I.) 107 Atl. 205.

There has been some question as to whether such equitable servitudes constitute "property interests"; but they have ordinarily been so treated. It has been held that they could not be imposed, save by deed or prescription. *Tibbets v. Tibbets* (1890) 66 N. H. 360, 20 Atl. 979. And they have been held to create "a property right," damage to which is direct and compensable, rather than uncompensable as merely consequential. *Flynn v. New York, W. & B. R. R.* (1916) 218 N. Y. 140, 112 N. E. 913. So an agreement not to build a front wall flush with the street is within the statute of frauds, as an attempt to create a property interest. *Rice v. Roberts* (1869) 24 Wis. 461. The instant case, classifying such servitudes as hereditaments, necessarily reaches the same conclusion. *Contra, Hall v. Solomon* (1892) 61 Conn. 476, 23 Atl. 876.

TORTS—CONTRIBUTORY NEGLIGENCE—LAST CLEAR CHANCE.—The defendants, ship repairers, undertook to rivet cleats to the weather deck of the plaintiff's steamer. A cargo of highly inflammable jute was exposed through the hatches to anything falling from the weather deck. A boy in the employ of the defendants, carrying a red-hot rivet in a pair of tongs, slipped on the deck and the rivet fell through the hatches and set the jute on fire. The plaintiff sued to recover for the loss caused by the fire. *Held,* that the plaintiff could recover because the loss was caused by the defendant's negligence, and that even though the plaintiff was guilty of contributory negligence, such negligence was not the proximate cause of the damage. *Ellerman Lines, Ltd. v. H. & G. Grayson, Ltd.* (1919, Ct. of App.) 121 L. T. R. 508.

See COMMENTS, *supra,* p. 542.

TORTS—TRESPASSERS ON TRACK—DUTIES OF RAILROAD.—The plaintiff sought to recover damages for the loss of his leg, which had been cut off by a train of the defendant railroad. The accident happened at night while the plaintiff was walking along the track in an intoxicated condition. The train was proceeding, according to instructions, at three or four miles an hour but neither the engineer nor the fireman saw the plaintiff in time to avoid the accident. The train was then stopped at once and all possible medical treatment furnished at the expense of the railroad. *Held,* that the plaintiff should not recover. *Hubbard v. Southern Ry.* (1919, Miss.) 83 So. 248.

The decision is in accord with the general rule, that a railroad owes no duty to trespassers upon its tracks, save that of not injuring them wilfully or wantonly. See (1912) 21 YALE LAW JOURNAL, 248. This rule has been limited, however, to the extent that where the railroad tracks have long been used as a pathway with the knowledge and acquiescence of the company, it is bound to keep a reasonable lookout for persons upon the track. See (1911) 20 *ibid.,* 669.

TRIALS—MISCONDUCT OF JURY—STATEMENT BY JUROR OF FACTS NOT IN EVIDENCE.—The defendant was prosecuted for frequenting a house of ill fame. He pleaded that he was a constable and had gone there only to collect rent, apparently his duty. His position as constable was not questioned on the trial. He was convicted, but it later appeared from the affidavits of two jurors that